

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL LUTHER DIX,

Defendant.

2:13-cr-00309-JCM-VCF

ORDER

Before the court is Mr. Paul Luther Dix's Motion for Reconsideration of Order (#46). Since Ms. Brenda Weskler has withdrawn from this case, the court has reviewed Mr. Dix's Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (#41) and Motion to Proceed *in forma pauperis* (#42). The mistaken insertion of the original criminal file in the caption of a motion seeking to vacate sentence under 28 U.S.C. § 2255 is not ground for dismissal; rather, the petition should be assigned a civil number and treated as the commencement of an independent civil proceeding. See *Hutto v. U.S.*, C.A.5 (Tex.) 1975, 509 F.2d 132, rehearing denied 511 F.2d 172.

Accordingly,

The Clerk of Court is directed to treat the Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (#41) as a petition commencing an independent civil proceeding and assign to it a civil number.

DATED this 2nd day of December, 2015.



CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE